



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

December 22, 1952

Hon. John Henry Minton Opinion No. V-1561
District Attorney
First Judicial District Re: Legality of a 5% statutory
Hemphill, Texas commission for the county
 treasurer, upon authoriza-
 tion by the commissioners'
 court, on funds received
 from the Federal government
 for national forest acreage
 and paid out to school dis-
 tricts.

Dear Sir:

You have requested an opinion on the following question:

"Is the Commissioners' Court of Sabine County, a county in which are located United States National Forest acreage, entitled to charge against the school districts having forest lands in their area and retain for the county a five per cent (5%) commission on the fifty per cent (50%) of the moneys received by the Commissioners' Court from the Treasurer of the State of Texas from forest sales which is directed by Article 2351b-4 to be allocated to the school districts in proportion to the area in said districts?"

Article 2351b-4, V.C.S., provides:

"Whereas Congress has heretofore passed a law which provides that thereafter twenty-five per centum (25%) of all moneys received during any fiscal year from each national forest shall be paid at the end thereof by the Secretary of the Treasury to the State or Territory in which said forest is situated to be expended as the State or Territorial Legislature may prescribe for the benefit of the public schools and the public roads of

the county or counties in which the national forest is situated, and whereas the Legislature of the State of Texas has not prescribed any method for prorating said funds, now, therefore, be it enacted that the Commissioners Court of the counties in Texas in which such national forests are situated are hereby authorized to prorate all such funds received and to be received from the Federal Government for timber and all other income derived from such lands as follows:

"Fifty per cent (50%) of such money received shall be allocated to the school district in proportion to the area in said districts, and fifty per cent (50%) of same to the county for the benefit of the public roads in said county. Provided the Commissioners Court may transfer the fifty per cent (50%) received by said Court to the school districts."

Article 3941, V.C.S., provides:

"The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided that he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office." (Emphasis ours.)

Article 3942, V.C.S., provides:

"The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and

disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school funds of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, that he shall receive no commissions on money transferred."

Section 500 of Title 16, U.S.C.A., provides that national forest receipts payable thereunder may be expended as the state legislature prescribes. The legislature through the enactment of Article 2351b-4 provided that money received shall be used for the benefit of the public schools and public roads of the counties. Att'y Gen. Op. V-93 (1947).

National forest receipts become neither a part of the permanent county school fund or the county available public school fund. Article 7, Section VI, Tex. Const. Therefore, Article 3942 has no application to your request.

It was held in Attorney General's Opinion O-1058 (1939) that the county treasurer was entitled to receive the commissions provided in Article 3941 on moneys received by the treasurer from the federal government in connection with a P.W.A. job of constructing a county jail since "the County Treasurer is entitled to receive as commission . . . on all moneys other than school funds." However, 50% of the money received from the federal government in the instant case became county moneys to be used for the benefit of public roads. The remainder is held in trust by the County Treasurer for the use and benefit of the public schools which cannot be diverted. Article 3941 specially excepts from its provisions school funds and it is therefore our opinion that it has no application to that portion of the money received from the federal government to be used for the benefit of the public schools of the county.

The county officials of Sabine County are compensated on a salary basis. Therefore, Section 3 of Article 3912e, Vernon's Civil Statutes, is applicable to that portion of the money to be used by the benefit

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of public roads. Section 3 of Article 3912e provides in part:

"In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain;
. . ."

In view of this statute, the County Treasurer of Sabine County cannot charge the county with any fee or commission. Consequently, commissions on monies received or disbursed are not drawn by the treasurer and then transferred or deposited to the Officers' Salary Fund. You are therefore advised that the County Treasurer cannot receive any commission on the money received from the national forest receipts.

SUMMARY

A county treasurer, whether compensated on a salary basis or on a fee basis, is not entitled to receive any fee or commission on the 50 per cent of national forest receipts allocated by Article 2351d-4, V.C.S., to the school districts of the county.

Yours very truly,

APPROVED:

PRICE DANIEL
Attorney General

J. C. Davis, Jr.
County Affairs Division

Mary K. Wall
Reviewing Assistant

Charles D. Mathews
First Assistant

By *John Reeves*
John Reeves
Assistant

JR:am